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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/281,474	03/30/1999	MILIND RAJOPADHYE	DM-6958	7274

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EXAMINER

JONES, DAMERON L

ART UNIT PAPER NUMBER

1616

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/281,474

Applicant(s)

RAJOPADHYE ET AL.

Examiner

D. L. Jones

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/30/04 & 8/30/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-35, 48-50 and 52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-35, 48-50, and 52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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ACKNOWLEDGMENTS

1. The Examiner acknowledges the acceptable RCE filed 8/30/04. In addition, the Examiner acknowledges the amendment filed 6/30/04 wherein claims 11, 36-47, and 51 are canceled.

Note: Claims 1-10, 12-35, 48-50, and 52 are pending.

RESPONSE TO APPLICANT'S ARGUMENTS/AMENDMENT

2. The Applicant's arguments filed 6/30/04 to the rejection of claims 1-10, 12-35, 48-50, and 52 made by the Examiner under 35 USC103 and/or double patenting have been fully considered and deemed non-persuasive for the reasons of record in the office action mailed 3/31/04 and set forth below.

Double Patenting Rejection

The provisional rejection of claims 1-10, 12-35, 48-50, and 52 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over copending application numbers 09/465,300; 09/466,582; 09/599,364; 09/281,209; and 09/948,807 are MAINTAINED for reason of record in the office action mailed 7/2/02.

Note: It is once again duly noted that Applicant intends to rebut the double patenting rejections once all other rejections are withdrawn.

103 Rejection

The rejection of claims 1, 2, 12-15, 17, 19-23, 25, 27, 28, 31-35, 48-50, and 52 are under 35 USC 103(a) as being unpatentable over Palladino et al (US Patent

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5,780,426) in view of Sharma (US Patent No. 6,331,285) is MAINTAINED for reasons of record in the office action mailed 3/31/04 and those set forth below.

Applicant asserts that Palladino et al fail to disclose every aspect of the instant invention. In addition, Applicant asserts that the secondary reference, Sharma, fail to disclose a targeting moiety bound to a chelator. Also, Applicant asserts that Palladino et al is directed to non-RGD $\alpha_v\beta_3$ targeting moieties while Sharma discloses conformationally fixed RGD containing peptides.

First, it should be noted that the rejection is a combination rejection; thus, as set forth in the previous action, while Palladino et al does not disclose a specific species having all of the components as set forth in Applicant's claims 1 and 52, the reference does suggest the presence of the component when combined with the teachings of Sharma.

Secondly, Applicant asserts that Sharma fails to disclose a targeting moiety bound to a chelator. It should be noted that Sharma is the secondary reference and is not required to disclose all features present in the primary reference.


Third, while Sharma disclose RGD containing peptides, the reference also discloses RGD mimics. For example, columns 12, lines 60 through column 14, line 3, discloses peptides that 'imitate' the RGD sequence, but do not specifically contain RGD (Arg-Gly-Asp). Thus, these mimics having affinity for RGD binding cites. Hence, both Palladino et al and Sharma disclose non-RGD peptides.

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3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on (571) 272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. L. Jones
Primary Examiner
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November 12, 2004